IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

R.F.A. 131 of 1998 and 295/98

Date of Decision: 20.6. 2006.

Sardar Birender Pal Singh ***…..Appellants.***
Versus
The Collector Land Acquisition, Shimla ***……Respondent.***

AND

Himachal Pradesh University ***…..Appellant***
Vs
Birender Pal Singh & others ***…..Respondents.***

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The Hon'ble Mr. Justice Dev Darshan Sud,Judge.

Whether approved for reporting?[1]

For the Appellant: Mr. Bimal Gupta, Advocate for appellant in RFA 131/98.
Mr. S.R. Sharma, Advocate, for appellant No. 1 in RFA 295/95.
Mr. M.S. Chandel, Advocate General, with Mr. Rajan Dewan, Addl. A.G. for appellant No. 2 in RFA NO. 295/98

For the Respondents: Mr. M.S. Chandel, Advocate General with Mr. Rajan Dewan, Addl. A.G. respondent in RFA 131/98.
Mr. Bimal Gupta, Advocate, for respondent in RFA 295/98.

Dev Darshan Sud, Judge.

These two appeals are being disposed of as a common question of law is involved in both the appeals. RFA No. 295/98 has been preferred by the Himachal Pradesh University and RFA No. 131/98 has been preferred by the land owners against the judgment of the Reference Court passed in Land Reference No. 17-S/4 of 1974 instituted on

[1] Whether Reporters of Local Papers may be allowed to see the judgment?

15.6.1974 and decided on 18.2.1998. Obviously, the appellants in RFA No. 131 of 1998 are seeking enhancement of the compensation awarded to them by the Reference Court. In the appeal filed by the University, a grievance has been made that since the land which is the subject matter of the acquisition, was admittedly acquired for the University which is a statutory authority, an opportunity of presenting its case before the Reference Court should have been given, which admittedly was not given. Since the matter is being remanded to the Trial Court, submissions which have been touching the merits of the case are not being considered. It is undisputed that the land of the petitioners in RFA No. 131/1998 was acquired for the University. It is also not disputed that no notice was given to the University by the Reference Court and accordingly, they were deprived of the opportunity of opposing the reference and leading evidence. Learned counsel appearing for the Himachal Pradesh University has relied upon a case titled **U.P. Awas Evam Vikas Parishad** vs. **Gyan Devi and others (1995) 2 SCC 326**. The Hon'ble Supreme Court, while interpreting the provisions of Section 50 of the Land Acquisition Act, (hereinafter referred to as "the Act), after consideration of the provisions of the Act held:-

> "Under Section 50 (2) of the L.A. Act the company for whom land is being acquired is also entitled to appear and adduce evidence for the purpose of determining the compensation. Since the company for whom land is acquired stands on the same footing as a local authority whatever has been said with regard to a local authority would apply to a company. It is, however, made clear that matters which stand finally concluded will not be reopened.

To sum up, our conclusions are:

1. Section 50(2) of the L.A Act confers on a local authority for whom land is being acquired a right to appear in the acquisition proceedings before the Collector and the Reference court and adduce evidence for the purpose of determining the amount of compensation.

2. The said right carries with it the right to be given adequate notice by the Collector as well as the reference court before whom acquisition proceedings are pending on the date on which the matter of determination of compensation will be taken up.

3. The proviso to Section 50(2) only precludes a local authority from seeking a reference but it does not deprive the local authority which feels aggrieved by the determination of the amount of compensation by the Collector or by the reference Court to invoke the remedy under Article 226 of the Constitution as well as the remedies available under the L.A Act.

4. In the event of denial of the right conferred by Section 50 (2) on account of failure of the Collector to serve notice of the acquisition proceedings, the Local authority can invoke the jurisdiction of the High Court under Article 226 of the Constitution.

5. Even when notice has been served on the local authority the remedy under Article 226 of the Constitution would be available to the local authority on grounds on which judicial review is permissible under Article 226.

6. The local authority is a proper party in the proceedings before the reference court and is entitled to be impleaded as a party in those proceedings wherein it can defend the determination of the amount of compensation by the Collector and oppose enhancement of the said amount and also adduce evidence in that regard.

7. In the event of enhancement of the amount of compensation by the reference court if the Government does not file an appeal, the local authority can file an appeal against the award in the High Court after obtaining leave of the Court.

8. In an appeal by the person having an interest in land seeking enhancement of the amount of compensation awarded by the reference court, the local authority should be impleaded as a party and is entitled to be served notice of the said appeal. This would apply to an appeal in the High Court as will as in this Court.

9. Since a company for whom land is being acquired has the same right as a local authority under Section 50 (2), whatever has been said with regard to a local authority would apply to a company too.

10. The matters which stand finally concluded will, however, not be reopened."

This decision has been reiterated in **Abdul Rasak and others** vs. **Kerala Water Authority and others (2002) 3 SCC 228:-**

"The High Court, in its impugned judgment, formed an opinion that the law laid down by the Constitution Bench governed the cases at hand and, therefore, the award given by the civil court on reference, stood vitiated for want of notice to KWA. The High Court allowed all the appeals pending before it and remanded the case for decision afresh by the reference court, after affording the parties an opportunity of adducing evidence in support of their respective contentions. Feeling aggrieved by the order of remand, the claimants have filed these appeals, by special leave.

In our opinion, the High court has not erred in taking the view which it has taken and directing the reference cases to be remitted to the civil court consistently with the law laid down by the Constitution Bench. As KWA shall have to be impleaded as

party to the proceedings before the civil court from very beginning, a retrial becomes unavoidable."

Turning to the facts of the preset case, it is not disputed that the notice under Sub Section 2 of Section 50 of the Act was never given to the University either by the Collector or by the Reference Court. In these circumstances, both these cases are remanded to the learned District Judge with the following directions:-

1. The Himachal Pradesh University shall be deemed to have been brought on record in the reference case out of which present appeal arises.

2. The cause title of the reference shall be amended accordingly.

3. The Himachal Pradesh University may, if it so thinks fit, file written statement to the claim petition filed by the claimants.

4. The Himachal Pradesh University shall be allowed an opportunity of cross-examining the witness who have already been examined. However, in case such witnesses are not available and cannot be called before the Court, their statements shall not be excluded from consideration and shall be read in evidence.

5. The claimants as also the Himachal Pradesh University may adduce such other evidences, oral and documentary, as they may propose to do in support of their respective contentions. It goes without saying that both the parties shall be given an opportunity of cross-examining their respective witnesses. The statements of the witnesses already recorded on behalf of the claimants will not be recorded afresh.

6. The Reference Court shall dispose of the proceedings expeditiously considering that the matter was pending in the Referenbce Court in 1974 and the award of the Land Acquisition Collector was made in the year 1973. A period of more than 33 years has elapsed. The entire trial of the case will be concluded not later than 9th December, 2007. No extension of time shall either be asked or be granted. The learned Reference Court will ensure that the matter is taken up and decided expeditiously and , if possible, on day to day basis. The Court may decide its own calendar. It is made clear that no adjournment will be given and the entire proceedings will be completed within the time frame as aforesaid. Learned counsel for the claimants has submitted that a part of the awarded amount is lying deposited in this Court. It is directed that same shall remain invested in fixed deposit and shall abide by the decision of the reference petition. Parties shall bear their own costs.

20th June, 2007. **(Dev Darshan Sud),**
(cm) **Judge.**